



## ***CLOSED CASE SUMMARY***

ISSUED DATE: NOVEMBER 11, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0283

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Document in a Use-of-Force Report All Uses of Force Except De Minimis Force	Sustained
# 3	8.400-POL-1 Use of Force Reporting and Investigation 4. The Sergeant Will Review the Incident and Do One of the Following:	Not Sustained (Training Referral)
# 4	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Sustained

#### **Imposed Discipline**

Written Reprimand

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Document in a Use-of-Force Report All Uses of Force Except De Minimis Force	Not Sustained (Training Referral)
# 3	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Training Referral)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

It was alleged that the Named Employees engaged in excessive force and that they failed to document reportable force. It was further alleged that Named Employee #1 did not ensure that the force was properly classified and investigated and that he failed to take action on an allegation of potential misconduct. Lastly, it was alleged that Named Employee #2 failed to record Body Worn Video.



---

**SUMMARY OF INVESTIGATION:**

Officers, including the Named Employees, were dispatched to assist the Seattle Fire Department (SFD) with a patient who was refusing medical treatment. Upon arrival, the officers were informed that the patient was standing on the second-floor balcony holding her arms over the edge. They also learned that she had pepper spray. The officers went up to the balcony and worked with SFD to prevent the patient from jumping off. In order to do so, first SFD and then the officers grabbed onto the patient and held her.

While this was occurring, the patient stated: "You guys are hurting me you're not paramedics." Named Employee #2 (NE#2), who with Named Employee #1 (NE#1) was holding onto the patient, said that "no one" was hurting her. The officers told the patient to have a seat, but she refused to do so. The officers tried to pull her down and she exclaimed: "Ow...okay...ow...you're hurting me." The officers also worked to unhook the patient's leg from the balcony and to move her back away from the edge. They were able to do so and sit her down. At that point, she stated to her partner: "Stop your breaking me...they're breaking me..." She told the officers that she was bleeding and they responded that she was not and asked her where she thought the blood was. She then stated, again to her partner: "He's breaking my arm...stop...no...ow." The patient stood up and moved back towards the railing while the officers tried to hold on to her. NE#2 told her not to kick him. She said "ow" again. The officers told her that they did not want her to jump over the edge and asked her if she would walk down to the ambulance. She accused the officers of breaking her arm and NE#1 told her that no one was doing that. Immediately thereafter, the patient exclaimed: "Please don't do that to me...ow it hurts...stop" and "please don't break my arms....it hurts." The officers said that no one was doing anything to hurt her and that they were just holding onto her. NE#2 told the patient to "quit moving" and she said "ow." SFD personnel then helped unhook the patient's legs from the balcony and she was carried downstairs to a waiting gurney. She was strapped to the gurney and transported to a hospital pursuant to an involuntary detention.

During a subsequent incident, the patient's partner was investigated for domestic violence assault against her. He told officers that the patient had been physically assaulted by police during their last interaction with SPD. A Sergeant responded to the scene and was informed of this claim. The Sergeant looked up the prior incident and determined that neither NE#1 nor NE#2 completed any force reporting. He further determined that NE#1, who was assigned as an Acting Sergeant, did not refer the patient's potential allegation of excessive force to OPA or, in the alternative, screen the incident with OPA as potential unsubstantiated misconduct. The Sergeant informed an Acting Lieutenant who concurred that SPD reporting policies were potentially violated by the Named Employees. An OPA referral was made and this investigation ensued.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

***8.200 - Using Force 1. Use of Force: When Authorized***

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends "on the totality of the circumstances" known to the officers at the time of the force and must be balanced against "the rights of the subject, in light of the circumstances surrounding the event." (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (See id.) Force is necessary where "no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose." (Id.) Lastly, the force used must be proportional to the threat posed to the officer. (Id.)



---

Based on OPA's review of the Body Worn Video (BWV), the force used by the Named Employees was consistent with policy. The officers had a legal right to take the patient into custody to get her medical attention given that they believed that she was in crisis and that she may be intending to harm herself. When she declined to voluntarily come off of the balcony, the use of force to compel her to do so was reasonable. It was also necessary under the circumstances to get her away from the edge of the balcony and to ensure her and their safety. In addition, there did not appear to be any reasonable alternatives to using force to do so given her continued lack of compliance. Lastly, the force was proportional to the threat the patient posed to herself if allowed to remain on the balcony. Notably, while the patient complained of pain and said that her arm was being broken, there was no indication that either officer used undue force. Indeed, the force they used was that needed to pull the patient back from the balcony, control her body, and to take her downstairs.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #1 - Allegation #2**

***8.400 - Use of Force Reporting and Investigation 1. Officers Shall Document in a Use-of-Force Report All Uses of Force Except De Minimis Force***

SPD Policy 8.400-POL-1 requires that officers report all uses of force except de minimis force. A complaint of pain is reportable force and must be documented as a Type I.

Here, NE#1 was present for numerous complaints of pain made by the patient. Moreover, he was hands-on with her at the time of virtually all of those complaints of pain. However, he did not complete a use of force report. In addition, as the Acting Sergeant during this incident, he further failed to identify that Type I force was used and ensure that it was timely and thoroughly investigated. This resulted in NE#2 also failing to complete a force report.

While OPA believes that the fact that he was an Acting Sergeant at the time is somewhat of a mitigating factor, NE#1 did not need to go through Sergeants' training to be aware that a complaint of pain is Type I force that needs to be documented and investigated. This is a fundamental aspect of SPD's use of force policy and is clearly set forth therein. NE#1's failure to identify this, to document his force, and to ensure that the force was investigated was a violation of both policy and his training.

The proper reporting and investigation of force is one of the most crucial and fundamental reforms that was created under the Consent Decree. OPA and SPD take the failure to perform these acts seriously and past precedent informs the determination that a Sustained finding is warranted.

As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**



---

**Named Employee #1 - Allegation #3**

***8.400-POL-1 Use of Force Reporting and Investigation 4. The Sergeant Will Review the Incident and Do One of the Following:***

SPD Policy 8.400-POL-1(3) requires that a sergeant review a force incident, classify the force as either Type I, Type II, or Type III, and ensure that it is investigated.

As discussed above, NE#1 did not do so here. However, given his status as an Acting Sergeant and given that Allegation #2 is already recommended Sustained, OPA finds it unnecessary to also issue a Sustained finding here. Instead, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should receive additional training concerning the requirement that he properly identifies and classifies force and that he ensures that it is thoroughly and timely investigated. This includes complaints of pain, which constitute Type I force. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #1 - Allegation #4**

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation***

SPD Policy 5.002-POL-5 requires supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor, while allegations of serious misconduct – such as the use of excessive force – must be referred to OPA. (SPD Policy 5.002-POL-5.)

Here, NE#1 was present for multiple allegations of pain made by the patient, as well as her claims that officers were “breaking” her and “breaking” her arm. Such claims raise the specter of an allegation of excessive force. However, NE#1 did not identify this and did not make an OPA referral. Moreover, to the extent he deemed the complaints to be without a factual basis, he did not avail himself of the unsubstantiated misconduct screening program, which is purposed for exactly these types of situations. Ultimately and unfortunately, NE#1 took no action at all.

As a general matter, a first-time violation of this policy would result in retraining. This is particularly the case where the involved employee is an Acting Sergeant. However, this is the second time NE#1 has failed to identify and take appropriate action on potential misconduct. In the first case – 2020OPA-0315 – NE#1 did not identify potential unprofessional behavior, which resulted in a Sustained finding against one officer, even though he reviewed BWV of the incident. The case was processed as a Supervisory Action and NE#1 received additional training. Given that this is the second occasion, corrective action, including discipline, is warranted.

As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**



---

**Named Employee #2 - Allegation #1**

***8.200 - Using Force 1. Use of Force: When Authorized***

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #2 - Allegation #2**

***8.400 - Use of Force Reporting and Investigation 1. Officers Shall Document in a Use-of-Force Report All Uses of Force Except De Minimis Force***

NE#2 stated that he did not complete a use of force report because no force investigation was completed. He also did not think that any of the force he used during this incident was more than de minimis. He said that, after watching the BWV, he agreed that he should have completed a Type I force report.

OPA concurs with NE#2 that he should have completed a force report and finds that the failure to do so was contrary to policy. However, for two reasons, OPA does not recommend that he receive a Sustained finding. First, the decision to not complete a force investigation rested with the NE#1. Given that he was the Acting Sergeant, NE#1 should have ensured that reports were written. While this does not necessarily excuse NE#2, it is a mitigating factor. Second, from OPA's records, there is no indication that NE#2 has ever been previously disciplined or counseled concerning the failure to complete force reporting when required. Based on his OPA interview, he appears to have learned from his mistake here and this, not punishment, is and should be the desired result of our disciplinary system.

Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2 should be counseled concerning this incident and, specifically, regarding his failure to complete a force report. It is his obligation to make sure that this is done and to know that a complaint of pain constitutes a reportable use of force. NE#2 should be informed that future non-compliance with this policy may result in a Sustained finding and the potential imposition of discipline. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #2 - Allegation #3**

***16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity***

SPD Policy 16.090-POL-1(5)(b) states that when safe and practical, employees will record "arrests and seizures", as well as "questioning [of] victims, suspects, or witnesses." It was alleged that NE#2 violated policy when he did not record BWV during this incident.

At his OPA interview, NE#2 acknowledged that he did not record video and that, by doing so, he violated policy. He told OPA that he meant to do so and that it was a mistake. This statement was corroborated by the BWV recorded



---

by NE#1, in which NE#2 could be heard telling an individual that he was recording. It follows from this that he erroneously believed that he was doing so.

From OPA's review, this is the first time that NE#2 has failed to record BWV when required. As such, and consistent with past precedent, OPA recommends that he receive retraining rather than a Sustained finding. However, NE#2 should be on notice that future failures to record BWV may result in discipline.

- **Training Referral:** NE#2 should be reminded by his chain of command of the requirement to record BWV when appropriate. He should be informed that any future failure to comply with this policy may result in discipline. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Lawful and Proper)**